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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. EDWIN ACOSTA, Defendant and Appellant.	B207089 (Los Angeles County Super. Ct. No. BA301881)

APPEAL from a judgment of the Superior Court of Los Angeles County. Peter Espinoza, Judge. Affirmed.

Edwin Acosta, in pro. per., and Allison K. Simkin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Edwin Acosta of attempted robbery, with a finding that he had personally used a firearm during the commission of the offense. The trial court sentenced Acosta to state prison for two years (mid-term) on his attempted robbery conviction, plus ten years for the firearm finding. We affirm.

FACTS

On December 21, 2005, at about 9:45 a.m., Veronica Tan was "getting ready for the day" at her family's jewelry store, cleaning the tops of the glass showcases with Windex, when two males walked into the store. One of the males asked Tan to come over to where he was standing, lifted ups his shirt to show part of a gun, and said, "This is a holdup." The male then pointed to two trays of earrings, and said, "Give me these things." Tan replied, "Okay," and started to move backward, explaining that she was going to get a bag. Instead, Tan picked up an alarm system "clicker" that was next to the register. At that point, the robber jumped over the showcase toward Tan, and Tan tried to push the "silent alarm" button on the clicker, but pushed the "medical alarm" button by mistake. When the robber heard the "beep" from the medical alarm, he got "scared" and jumped back over the counter, and the two robbers fled.

Police responded to the crime scene about 30 minutes after the attempted robbery, and, shortly thereafter, the "latent print section" obtained fingerprints from the showcase. Los Angeles Police Department Detective Gilbert Alonso "submitted [the fingerprints] into the system and they were matched up to [Acosta]." In January 2006, Tan identified Acosta's photograph from a six-person photograph line-up.

In May 2006, the People filed an information charging Acosta with one count of attempted robbery, with allegations that he personally used a firearm during the offense.

At a trial by jury in October 2006, the People presented evidence establishing the facts summarized above. In addition, a forensic fingerprint specialist "rolled" Acosta's fingerprints, compared them to the fingerprints obtained from the scene of the attempted robbery, and concluded that the fingerprints matched. Acosta did not present a defense. The jury convicted Acosta of attempted robbery, and found true the allegation that he had personally used a firearm during the commission of the offense.

In January 2007, the trial court sentenced Acosta to state prison for a mid-term of two years on his attempted robbery conviction, plus ten years for the personal firearm use finding, for a total term of twelve years.

DISCUSSION

Acosta filed an appeal, and we appointed counsel to represent Acosta on appeal. On August 27, 2008, Acosta's appointed counsel filed an opening brief raising no issues. On the same date, we notified Acosta by letter that he could submit within 30 days any arguments or contentions which he wished us to consider.

On October 24, 2008, Acosta filed a handwritten response. We construe Acosta's response to advance the following claims: (1) his attempted robbery conviction is not supported by substantial evidence because there was a "lack of eyewitnesses that would identify or imply [him as being] a possible suspect in [the] attend [*sic*] robbery;" (2) his attempted robbery conviction is not supported by substantial evidence because witness Tan "could not identify nor put any kind of doubt as [him] being the suspect;" (3) his attempted robbery conviction must be reversed because Detective Alonso testified at trial that Acosta had a prior criminal history; (4) the ancillary firearm finding is not supported by substantial evidence because a firearm was "never found nor brought to trial;" (5) the entire judgment must be reversed because the trial court wrongly denied his "petition" for a "dismissal of the jury at hand, [during] Detective . . . Alonso's testimony;" and (6) the ancillary firearm finding must be reversed because the trial court wrongly denied his "petition" for a "dismissal" of the firearm allegation on the ground that no firearm was ever found.

I. Sufficiency of the Evidence

We collectively address and reject Acosta's contentions that the evidence in the record is not sufficient to support the jury's verdict. When presented with a defendant's challenge to the sufficiency of the evidence, a reviewing court must examine the record in the light most favorable to the judgment, and may not reassess the credibility of the witnesses or substitute its conclusions for those reached reasonably in the lower court. (*People v. Snow* (2003) 30 Cal.4th 43, 66; see also *People v. Young* (2005) 34 Cal.4th

1149, 1181 [the testimony of a single witness is sufficient to support a conviction].) The evidence in the record shows that the attempted robbery victim identified Acosta from a photograph line-up, and that Acosta's fingerprints were found on the showcase where the attempted robbery occurred. The victim testified that the robber had a gun. No more is needed.

II. The Testimony Regarding Acosta's Criminal History

During Detective Alonso's testimony, the following exchange occurred:

"[THE PROSECUTOR]: Now, over the course of your investigation, did you receive any type of evidence to assist you?

"[DETECTIVE ALONSO]: Well, . . .we were able to obtain, and that was through our latent print section, is they dusted the glass counter for any good possible prints [and] . . . [¶] that evidence, it's — first, before we get a match on a print, we have to determine whether or not the print . . . is of enough quality to be entered into a data base, a system where if there's any possible matches, then it will basically give you a name and a matching, what we call, CII number for an individual.

"[THE PROSECUTOR]: Do you know if in this case anything like that happened?

"[DETECTIVE ALONSO]: Yes. There was, I believe, five prints lifted, and they were of AFIS quality, and they were submitted into the system and they were matched up to an individual.

"[THE PROSECUTOR]: And what did you do with that information?

"[DETECTIVE ALONSO]: I pulled that individual's photograph, [and] I noticed that he had prior booking — prior arrest —

"[DEFENSE COUNSEL]: Object, your Honor, motion to strike.

"[THE COURT]: It's stricken.

"[DEFENSE COUNSEL]: Ask the jury to be instructed —

"[THE COURT]: Jury's admonished to disregard the last remark.

"[THE PROSECUTOR]: So you were able to take this information and match it to a particular individual?

"[DETECTIVE ALONSO]: Yes.

"[THE PROSECUTOR]: And who was that individual? What was the person's name?

"[DETECTIVE ALONSO]: Edwin Acosta."

We agree with Acosta that Detective Alonso should not have referred to Acosta's criminal history (see, e.g., *People v. Cabrellis* (1967) 251 Cal.App.2d 681, 684-688), but find the error harmless because it did not damage his right to a fair trial (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1029). The detective's statement regarding a record of Acosta's "prior arrest" was fleeting, vague and not inflammatory. It was subject to an immediate objection by his trial counsel, and an admonition by the trial court. We see nothing in the record which suggests to us that the jury's verdict resulted in any part from the detective's utterance of the words "prior arrest." On the contrary, we are more than amply satisfied, under any standard of review, that Acosta's jury convicted him because the evidence against him was strong, including the victim's pre-trial identification from a photograph line-up, buttressed by the presence of Acosta's fingerprints at the scene of the crime.

III. The "Petitions" to Dismiss

A. Detective Alonso's Testimony

A moment after Detective Alonso referred to Acosta's prior arrest, the prosecutor asked the detective when Acosta had been arrested, and Acosta's trial counsel interjected a relevance objection. At a side-bar conference, the prosecutor explained that he had asked the question because he anticipated a defense argument to the effect that no gun was ever found, and he (the prosecutor) wanted to establish that Acosta had been arrested months after the attempted robbery, and not "immediately after the crime." The trial court allowed the line of inquiry. Another moment later, while Detective Alonso was discussing Acosta's booking photograph (to establish the date of Acosta's arrest), the

detective testified that he could not remember whether the booking photograph was under Acosta's name "because Mr. Acosta used different names in the past."

At that point, Acosta's counsel moved for a mistrial on the following grounds: "There's been one time where this detective has volunteered that there were prior arrests of Mr. Acosta, which — he's an experienced robbery detective. He knows better. Then he tried to get into the fact that Mr. Acosta had used AKA's, none of which has been proven or is fact whatsoever." The trial court denied the motion for mistrial, but agreed to "look at" any curative jury instructions offered by Acosta's counsel.

During instructions, the trial court gave the following instruction to the jury: "On two occasions during the testimony of Detective Alonso, two responses were given by [him] that I struck from the record and ordered you to disregard. Statements that are stricken from the record are not to be considered by you, as said statements may not even be true, and there is no evidence in support of said statements. At this time, I remind you that any testimony that I have stricken shall be disregarded by you."

For the reasons explained above, we reject Acosta's claim that the trial court erred in denying his motion for a mistrial. Acosta's arguments simply have not persuaded us that Detective Alonso's wayward testimony damaged Acosta's right to fair trial. (*People v. Lewis and Oliver, supra,* 39 Cal.4th at p. 1029.)

B. The Firearm Finding

At the close of the prosecution's case-in-chief, Acosta's counsel moved to dismiss the allegation that Acosta had personally used a firearm during the commission of the offense on the following grounds: "There's no in-court identification of [Mr. Acosta] in this case, specifically with regard to the [firearm] allegation. There was no indication as to whether Mr. Acosta possessed any gun, no evidence of any gun recovered." The trial court denied the motion, ruling the evidence was "sufficient to let this question go to the jury."

We find no error. The victim testified that one of the male robbers lifted up his shirt and showed a gun, and said, "This is a holdup." The victim testified that this same male robber jumped over the showcase. The prosecution's evidence further showed that

Acosta's fingerprints were found on the showcase. There was sufficient evidence upon which the jury could have found, and did find, that Acosta was the robber with the gun.

DISPOSITION

Acosta's arguments are rejected for the reasons explained above. We have also independently reviewed the record on appeal, and are satisfied that Acosta's appointed counsel has fulfilled her duty, and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106.)

The judgment is affirmed.

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BIGELOW, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.